

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TEOFILO COLON,

Plaintiff,

08 CV 03142

- against -

ANSWER

CITY OF NEW YORK, DEPARTMENT OF
CORRECTION COMMISSIONER, MARTIN F. HORN,
PRISON HEALTH SERVICES, INC., MICHAEL
CATALANO, C.E.O. OF PRISON HEALTH SERVICES,
INC., DOHMH MEDICAL DIRECTOR TREVOR
PARKS, DOHMH PROGRAM DIRECTOR REBECCA
PINNEY, DOHMH DEPUTY COMMISSIONER LOUISE
COHEN, DOHMH MEDICAL DIRECTOR DOCTOR
BENJAMIN OKONTA, DR. PRAVIN RANJAN, DR.
JEAN RICHARD, DR. DIAH DOUGLAS, DR. LISA
NASON, DR. MICHAEL HALL, "JOHN DOE"
MEDICAL PROVIDERS PRISON HEALTH SERVICES,

**TRIAL BY JURY
DEMANDED**

Defendants.
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Defendant THE CITY OF NEW YORK, by his attorneys, HEIDELL, PITTONI,
MURPHY & BACH, LLP, Of Counsel to MICHAEL A. CARDOZO, ESQ., Corporation
Counsel of the City of New York, upon information and belief, answers the complaint herein as
follows:

AS AND TO THE SECTION DESIGNATED PRELIMINARY STATEMENT

FIRST: Denies the allegations contained in the paragraphs of the complaint
designated "1" through "3" insofar as the allegations pertain to the answering defendant and
otherwise denies knowledge or information sufficient to form a belief as to these allegations and
begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SECTION DESIGNATED JURISDICTION

SECOND: Denies the allegations contained in the paragraphs of the complaint designated “4” through “6” insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SECTION DESIGNATED PARTIES

THIRD: Denies the allegations contained in the paragraphs of the complaint designated “7” through “21,” insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these paragraphs. except admits that CITY OF NEW YORK was and is a municipal corporation with a principal place of business at 1 Centre Street, New York, New York, and that at certain times not specifically set forth in the complaint medical services are provided to inmates at Rikers Island in accordance with accepted standards of medical care and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SECTION DESIGNATED NOTICE OF CLAIM

FOURTH: Denies the allegations contained in the paragraph of the complaint designated “22.”

AS AND TO THE SECTION DESIGNATED CERTIFICATE OF MERIT

FIFTH: Denies the allegations contained in the paragraph of the complaint designated “23.”

AS AND TO THE SECTION DESIGNATED JOINT LIABILITY

SIXTH: Denies the allegations contained in the paragraph of the complaint designated "24."

AS AND TO THE SECTION DESIGNATED EXHAUSTION OF REMEDIES

SEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint designated "25" through "27."

AS AND TO THE SECTION DESIGNATED FACTUAL ALLEGATIONS

EIGHTH: Denies the allegations contained in the paragraphs of the complaint designated "28" through "37" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SECTION DESIGNATED DAMAGES

NINTH: Denies the allegations contained in the paragraph of the complaint designated "38" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE FIRST CAUSE OF ACTION

TENTH: Answering the paragraph of the complaint designated "39," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "38" with the same force and effect as if herein set forth at length.

ELEVENTH: Denies the allegations contained in the paragraphs of the complaint designated "40" and "41" insofar as the allegations pertain to the answering defendant and

otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SECOND CAUSE OF ACTION

TWELFTH: Answering the paragraph of the complaint designated “42,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “41” with the same force and effect as if herein set forth at length.

THIRTEENTH: Denies the allegations contained in the paragraphs of the complaint designated “43” through “49” insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE THIRD CAUSE OF ACTION

FOURTEENTH: Answering the paragraph of the complaint designated “50,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “49” with the same force and effect as if herein set forth at length.

FIFTEENTH: Denies the allegations contained in the paragraphs of the complaint designated “51” through “53” insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE FOURTH CAUSE OF ACTION

SIXTEENTH: Answering the paragraph of the complaint designated “54,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “53” with the same force and effect as if herein set forth at length.

SEVENTEENTH: Denies the allegations contained in the paragraphs of the complaint designated “55” and “56” insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE FIFTH CAUSE OF ACTION

EIGHTEENTH: Answering the paragraph of the complaint designated “57,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “56” with the same force and effect as if herein set forth at length.

NINETEENTH: Denies the allegations contained in the paragraphs of the complaint designated “58” through “61” insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SIXTH CAUSE OF ACTION

TWENTIETH: Answering the paragraph of the complaint designated “62,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs

of the complaint designated “1” through “61” with the same force and effect as if herein set forth at length.

TWENTY-FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint designated “63” through “66” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE SEVENTH CAUSE OF ACTION

TWENTY-SECOND: Answering the paragraph of the complaint designated “67,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “68” through “71” with the same force and effect as if herein set forth at length.

TWENTY-THIRD: Denies the allegations contained in the paragraphs of the complaint designated “68” through “71” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE EIGHTH CAUSE OF ACTION

TWENTY-FOURTH: Answering the paragraph of the complaint designated “72,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “71” with the same force and effect as if herein set forth at length.

TWENTY-FIFTH: Denies the allegations contained in the paragraphs of the complaint designated “73” and “74” and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE TENTH CAUSE OF ACTION

TWENTY-SIXTH: Answering the paragraph of the complaint designated “75,” defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated “1” through “74” with the same force and effect as if herein set forth at length.

TWENTY-SEVENTH: Denies the allegations contained in the paragraphs of the complaint designated “76” and “77” insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

AS AND TO THE ELEVENTH CAUSE OF ACTION

TWENTY-EIGHTH: Denies the allegations contained in the paragraphs of the complaint designated “78” and “79” insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

FOR A FIRST DEFENSE

TWENTY-NINTH: That whatever damages may have been sustained at the time and place alleged in the complaint by plaintiff were caused, in whole or in part, by the culpable conduct of plaintiff and without any negligence on the part of defendant. Damages, if any, are to be diminished proportionally to the culpable conduct of the plaintiff.

FOR A SECOND DEFENSE

THIRTIETH: That the equitable share of liability, if any, of defendant CITY OF NEW YORK, shall be determined pursuant to the provisions of Article 16 of the CPLR.

FOR A THIRD DEFENSE

THIRTY-FIRST: That one or more of the causes of action in the complaint fail to state a cause of action upon which relief may be granted.

FOR A FOURTH DEFENSE

THIRTY-SECOND: Plaintiff has failed to mitigate his alleged damages claimed herein.

FOR A FIFTH DEFENSE

THIRTY-THIRD: The amount of alleged damages claimed by plaintiff should be reduced pursuant to CPLR § 4545 to the extent of any collateral source benefits, remuneration or compensation received.

FOR A SIXTH DEFENSE

THIRTY-FOURTH: That plaintiff is not entitled to recover damages in this action under 42 U.S.C. §1983.

FOR A SEVENTH DEFENSE

THIRTY-FIFTH: Plaintiff may not properly assert a cause of action against the answering defendant for violation of 42 U.S.C. §1983.

FOR A EIGHTH DEFENSE

THIRTY-SIXTH: That the occurrence alleged in plaintiff's complaint was caused, contributed to and brought about, in whole or in part, by the conduct of persons over whom this defendant exercised no supervision or control, including the plaintiff, such conduct amounting to contributory negligence, and the damages and injuries otherwise recoverable by plaintiff, if any, should be diminished in proportion to which such person(s)' conduct bears to the conduct which caused plaintiff's injuries and damages, if any, pursuant to the decisional and statutory laws of the State of New York and the United States in such cases made and provided.

FOR A NINTH DEFENSE

THIRTY-SEVENTH: That this defendant alleges and states that plaintiff's claim for relief is barred, because plaintiff and plaintiff's representatives assumed the risk and were fully cognizant of any and all circumstances surrounding the events that gave rise to this action.

FOR A TENTH DEFENSE

THIRTY-EIGHTH: That this defendant alleges and states that there were intervening and superseding acts and occurrences over which it had no control and which caused any claimed injuries of plaintiff.

FOR A ELEVENTH DEFENSE

THIRTY-NINTH: That this defendant reserves the right to amend its answer and/or affirmative defenses that may be determined applicable in the future by discovery in this matter.

FOR A TWELFTH DEFENSE

FORTIETH: That this defendant denies any and all allegations of plaintiff's complaint not specifically admitted herein.

WHEREFORE, defendant CITY OF NEW YORK demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
June 23, 2008

Respectfully submitted,

HEIDELL, PITTONI, MURPHY & BACH, LLP
Of Counsel to MICHAEL A. CARDOZO, ESQ.,
Corporation Counsel of the City of New York

By:



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